

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to summary orders filed after January 1, 2007, is permitted and is governed by this court's Local Rule 32.1 and Federal Rule of Appellate Procedure 32.1. In a brief or other paper in which a litigant cites a summary order, in each paragraph in which a citation appears, at least one citation must either be to the Federal Appendix or be accompanied by the notation: "(summary order)." A party citing a summary order must serve a copy of that summary order together with the paper in which the summary order is cited on any party not represented by counsel unless the summary order is available in an electronic database which is publicly accessible without payment of fee (such as the database available at <http://www.ca2.uscourts.gov/>). If no copy is served by reason of the availability of the order on such a database, the citation must include reference to that database and the docket number of the case in which the order was entered.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, at 500 Pearl Street, in the City of New York, on the 14th day of August, two thousand seven.

Present: HON. ROGER J. MINER,
HON. ROBERT A. KATZMANN,
Circuit Judges,
HON. J. GARVAN MURTHA,*
District Judge.

XUE JIAN ZHENG,

Petitioner,

No. 04-1337-ag

- v. -

* The Honorable J. Garvan Murtha of the United States District Court for the District of Vermont, sitting by designation.

ALBERTO GONZALES, Attorney General,**

Respondent.

For Petitioner: Dehai Zhang, Flushing, New York

For Respondent: Peter D. Keisler, Assistant Attorney General, Civil Division,
DOJ, Leon Patton, Assistant United States Attorney, *for* Eric F.
Melgren, United States Attorney for the District of Kansas,
Kansas City, Kansas

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of Immigration Appeals (“BIA”), it is hereby **ORDERED, ADJUDGED, AND DECREED**, that the petition for review is **DENIED**.

Petitioner, Xue Jian Zheng, a citizen of the People’s Republic of China, seeks review of a February 23, 2004 opinion of the BIA affirming immigration judge (“IJ”) Joanna M. Bukszpan’s November 1, 2002 decision denying the petitioner’s application for asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”). *In re Xue Jian Zheng*, No. A77-322-445 (B.I.A. Feb. 23, 2004), *aff’g* A77-322-445 (Immig. Ct. N.Y. City Nov. 1, 2002). We assume the parties’ familiarity with the underlying facts and procedural history of the case.

We review the IJ’s decision where, as here, the BIA summarily affirms the IJ’s decision without opinion. *See Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005). We review *de novo* questions of law and the application of law to undisputed fact. *Secaida-Rosales v. INS*, 331 F.3d 297, 307 (2d Cir. 2003).

** The Clerk of the Court is directed to substitute Attorney General Alberto Gonzales for the named respondent, Attorney General John Ashcroft, pursuant to Federal Rule of Appellate Procedure 43(c)(2).

The petitioner contends that the IJ erred in pretermittting his claim without admitting any evidence after holding that, as a matter of law, he could not make out a claim for asylum, withholding, or CAT relief. First, petitioner argues that he merits asylum because the authorities sought to force his girlfriend to undergo an abortion. However, we recently held that the boyfriend of a woman who allegedly underwent a forced abortion does not automatically qualify for asylum status under 8 U.S.C. § 1101(a)(42). *See Shi Liang Lin v. U.S. Dep't of Justice*, ___ F.3d ___, Nos. 02-4611-ag, 02-4629-ag, 03-40837-ag, 2007 WL 2032066, at *10 (2d Cir. July 16, 2007) (en banc). Petitioner presents no evidence that he was persecuted or has a well-founded fear of future persecution “for other resistance to a coercive population control program.” 8 U.S.C. § 1101(a)(42); *see Lin*, 2007 WL 2032066, at *10.

To the extent petitioner alleges that he was persecuted when his mother was detained by the Chinese authorities, we have held that, as a general rule, “persecution of close family members . . . does not form the basis for a finding of past persecution of [the petitioner].” *Melgar de Torres v. Reno*, 191 F.3d 307, 313 n.2 (2d Cir. 1999). We see no reason to hold to the contrary here. Nor did petitioner demonstrate a well-founded fear of future persecution based on his mother’s detention.

Because the petitioner was unable to meet his burden of proof on his asylum claim, he was necessarily unable to meet the higher standard required to succeed on his claim for withholding of removal because it rested on the same factual predicate. *See Paul v. Gonzales*, 444 F.3d 148, 156 (2d Cir. 2006).

Finally, the petitioner argues that he will be tortured upon his return to China because he emigrated illegally. We previously have rejected this claim where, as here, the petitioner

presents no “particularized evidence” to suggest that someone in his circumstances is more likely than not to be tortured upon his return to China. *Mu Xiang Lin v. U.S. Dep’t of Justice*, 432 F.3d 156, 159-60 (2d Cir. 2005).

For the foregoing reasons, the petition for review is **DENIED**.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE, CLERK

By: _____